

NORTHWEST TERRITORIES INFORMATION AND PRIVACY COMMISSIONER

Review Recommendation 01-21

Review File: 00-162-4

BACKGROUND

In February, 2000, the Applicant received a letter from the Department of Justice advising him that they had received a Request for Information involving two letters which referred, at least in part, to the Applicant. The Applicant objected to the release of the information. Unfortunately, the request for review was received in my office after the thirty day notice period and the information had already been disclosed to the person who had requested it. The Applicant was, understandably, upset about the fact that his Request for Review had taken so long to arrive at my office and suggested that there should be some mechanism to ensure that the time periods provided for in the Act are not truncated as a result of slow mail delivery times. This issue has been addressed in the Information and Privacy Commissioner's last Annual Report and I understand that steps are being taken to amend the legislation to avoid this problem in the future.

In the meantime, the Applicant was advised that he had the right, under section 45 of the Act to ask that any information about him be corrected if felt that it was inaccurate or incomplete and that any person who had received the information would, under the terms of the Act, have to be provided with a copy of the correction. As a result, on July 31st, 2000, the Applicant requested that a correction be made to the letters in question to correct the information contained in them as that information related to the Applicant.

The Department of Justice declined the request to make a correction to the information contained in the letters. They did, however, place a copy of the Applicant's request on file and provided a copy of the Applicant's requested amendment to the third party who had received the original information.

On October 4th, 2000, this office received a request from the Applicant to review the decision of the Department of Justice to decline to correct the information in question.

DISCUSSION

Section 45 of the Access to Information and Protection of Privacy Act states as follows:

- a. an individual who believes that there is an error or omission in his or her personal information may request the head of the public body who has the information in his custody or under his control to correct the information;
- b. where a correction is not made in response to a request under subsection (1) the head of the public body shall make note of the requested correction or cross-reference the information to which it relates

Section 46 states:

Where a public body has disclosed personal information to another public body or a third party recipient in the twelve months before the request for correction of that information is received by the public body, the head of the public body shall notify the head of the other public body or the third party recipient that

- a) the personal information has been corrected or;
- b) a note of the requested correction has been made under subsection 45(2).

The documents in question are two letters written by two employees of the Yellowknife Correctional Centre. The letters were, in essence, their rendition of an incident involving the Applicant. The information which the Applicant wishes to have changed is a statement attributed to him in the letters. The Applicant wants the record to be changed to remove the statement he is alleged to have made because he says he never made it.

Because of the nature of the documents, which are in essence “witness statements”, they are subjective. Each of them outline what the individual writers subjectively saw, heard or experienced.

In this case, I believe that the Department was correct in refusing to alter the statements made by the writers of the two letters with respect to the words they allege they heard the Applicant say. It is not for the Applicant to say what a third party heard. He can disagree that he said the words attributed to him, but he is not in a position to say the writer did not hear those words. The only person who can say what they heard is the person who heard it. What the Applicant can and has done in this case is to ask that a notation be made, cross-referenced to the documents in question, that he denies that he made the statement attributed to him. The third party who received the records in the first instance will by reason of section 46, receive a copy of the denial, and the denial will appear on the file in question so as to alert any other person who sees the file that he does not agree with the statements attributed to him.

RECOMMENDATION

I find that the Department of Justice properly refused to “correct” the records in question. Furthermore, the steps taken by them to ensure that the Applicant’s objections are noted on the file and to alert the Third Party of the Applicant’s denial of the statements alleged to have been made by him were the proper steps required to be taken by them under the Act. I recommend that no further action be taken.

Elaine Keenan Bengts
Northwest Territories
Information and Privacy Commissioner